IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Second appeal no.1325 of 2005

Ajit Shantaram Tapkir ..Appellant

vs.

Ratnakar Laxmanrao Joshi ..Respondent

Shri R.A.Thorat for appellant.
Shri T.D.Deshmukh for respondent.

CORAM: S.C.DHARMADHIKARI J.
25th **July, 2007**

P.C.

1. Heard Shri Thorat appearing for the appellant/original defendant and Shri Deshmukh appearing for the respondent/original plaintiff.

2. The appellant/original defendant is in second appeal. Shri Thorat would contend that the substantial question of law is with regard to interpretation of document, namely, sale deed.

3. It is his case that the sale deed in favour of the present respondent/original plaintiff does not in any manner indicate that the disputed portion was to be kept as an amenity space/area and open to sky so as to enable the respondent/original plaintiff to use it as such. He submits that if upon perusal of the sale deed and interpretation of the contents thereof, it is clear that the disputed portion has not in any manner been referred

to in the sale deed, then, reliance upon the map (Exh.60) which in any way could not have been relied upon, would vitiate the judgments and decrees concurrently rendered. He submitted that the lay out map is by the authority who has not been empowered in law to sanction the same. On the own showing of the parties, the Chief Executive Officer had no jurisdiction in as much as the disputed portion was not a Non Agricultural Land. If it is not so, then, only Collector had necessary jurisdiction, power and authority to permit any development.

4. The respondent/original plaintiff had filed the suit against the appellant/original defendant in the Trial Court for permanent injunction on the basis that the suit property 1A is road and suit property 1B is the open space between plot nos. 17 and 18. It is contended that the suit property 1A is road between plot nos. 16 and 17 and is located on the west side of plot no.17. The open space is between plot nos. 17 and 18. It is 80’ x 72.4’ and it is kept open as a play ground and for using the same for some public ceremony. Thus, this is an amenity attached to the plot purchased by the persons. The lay out map has been sanctioned by Alandi Municipality and vendor of the plaintiff as well as the defendant is the same person.

5. In the Trial Court as well as in lower Appellate Court, it has come on record that as far as portion 1B is

concerned, there is no specific reference of the same in the sale deed. However, the affidavit was filed by the respondent/original plaintiff and the lay out map was exhibited on record. The lay out map clearly shows that the disputed portion 1B is open space between plot nos. 17 and 18. The map is signed by the vendors of the plaintiff. It is an open space which has to be kept open to sky and is for common use of the plot holders. Thus, this finding of fact recorded by the courts below by relying upon the affidavits so also lay out map.

6. In the above facts and circumstances, even if the sale deed does not mention the disputed portion 1B, it does not mean that a substantial question of law as raised by Shri Thorat would arise. This is not a case where sale deed requires any interpretation in as much as both sides have relied upon Exh.60 and other material. When the findings of facts are rendered in the back drop of Exh.60 and validity of which is put in issue, then, in my view reliance upon the said document/exhibit to conclude that the respondent/original plaintiff is entitled to permanent injunction as prayed cannot be said to be vitiated in any manner or perverse so as to call for interference in my limited jurisdiction under sec.100 of the Code of Civil Procedure.

7. Two decisions, namely, (i) Santakumari and others Vs.

Lakshmi Amma Janaki Amma (D) by LRs and others reported in (2000)7 Supreme Court Cases 60 and (ii) Neelu Narayani (dead) through LRs and others Vs. Lakshmanan (D) through LRS and others reported in (1999)9 Supreme Court Cases 237 relied upon by Shri Thorat in this case are of no assistance in as much as the interpretation of the sale deed would not arise in the peculiar backdrop of Exh.60. No question would arise of interpreting the sale deed and finding out what is sold thereunder when there is no dispute about the respective areas in possession of the parties to the suit and issue is only about the adjacent open space. That such a space is amenity open to all is not disputed even by the respondent/original plaintiff.

8. In the above circumstances, the finding of fact rendered in consonance with oral and documentary evidence does not warrant any interference.

9. The respondent/original plaintiff has stated before me that even if the decree is put in execution and possession of the said open space is taken from the appellant/original defendant, the same would be used as an amenity area for plot holders and kept open to sky. It will be for the use of all the plot holders. This is additional protection which would take away any apprehension of the appellant/original defendant about the intention of the respondent/original plaintiff.

10. The second appeal is summarily dismissed. There shall be no order as to costs.

(S.C.DHARMADHIKARI J.)